STATE OF MICHIGAN

COURT OF APPEALS

CITY OF NOVI,

Plaintiff/Counterdefendant-Appellee,

and

MIRAGE DEVELOPMENT, INC.,

Intervening Plaintiff-Appellee,

v

NANDA ENTERPRISES, INC.,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED
February 17, 2005

No. 256389
Oakland Circuit Court
LC No. 04-056848-CH

Before: Murray, P.J., and Meter and Owens, JJ.

PER CURIAM.

Defendant appeals as of right an order granting summary disposition in favor of plaintiff and intervening plaintiff, Mirage Development, Inc. ("Mirage"), declaring defendant's notice of dedication withdrawal invalid and compelling defendant to complete the street dedication process and allow plaintiff to accept the dedication. We affirm.

Defendant and Mirage are developers of neighboring subdivisions located west of Beck road and north of 9 Mile road in the city of Novi. Defendant obtained final plat approval for Cheltenham Estates ("Cheltenham") from the Novi City Council in June 1998. The plat indicated that all Cheltenham streets were dedicated to public use. Mirage obtained plat approval for Wilshire Abbey subdivision ("Wilshire") from the city council in December 2003. In January 2004, defendant filed a notice of withdrawal with the register of deeds declaring that it was withdrawing its offer to dedicate Cheltenham streets. Plaintiff had not yet formally accepted defendant's dedication.

Defendant first argues that the trial court erred when it concluded that plaintiff had accepted the dedicated streets by virtue of public use alone. We agree. This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion brought pursuant to MCR 2.116(C)(10) should

be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001).

A valid "dedication of land for a public purpose requires two elements: (1) a recorded plat designating the areas for public use; and (2) acceptance by the proper public authority." *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 113; 662 NW2d 387 (2003). Acceptance must be timely and disclosed through a manifest act of the public authority, by either formal or informal means. *Marx v Dep't of Commerce*, 220 Mich App 66, 73; 558 NW2d 460 (1996). Acceptance is timely if it is made before the offer to dedicate lapses or is withdrawn. *Kraus v Dept of Commerce (Kraus II)*, 451 Mich 420, 425; 547 NW2d 870 (1996). A municipality's mere approval of a plat is not sufficient to constitute acceptance; a more specific act is required. *Marx, supra*, p 77. The burden of proving that an offer was accepted is on the public authority, while the burden of proving that the offer was withdrawn is on the property owner. *Id.*, p 75. [1]

In *Eyde Bros Dev Co v Roscommon Co Bd of Rd Comm'rs*, 161 Mich App 654, 661-662; 411 NW2d 814 (1987), this Court addressed the now repealed plat act, 1929 PA 172, which contained a provision similar to MCL 560.253(1), which appeared to vest fee of parcels designated for public use in the proper public authority upon the mere recording of a plat. The Court found that case law, dating back to 1875, consistently required the additional step of acceptance on behalf of a municipality for a dedication of property to the public to be complete. *Id*., pp 662-664. It stated that a public authority could manifest its acceptance, formally and informally, in the following ways: "(1) formal by resolution; (2) informal through the expenditure of public money for repair, improvement and control of the roadway; *or* (3) informal through *public use.*" *Id*., p 664 (emphasis added). Based on this rule, the *Eyde* Court held that mere designation of a street on a recorded plat is insufficient to render the streets public streets. *Id*., p 665.[2]

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[1] In *Marx, supra*, pp 74-77, this Court reconciled the common law rule, which required a manifest act for acceptance, with a provision of the Land Division Act (LDA), MCL 560.101, *et seq*., which appeared to allow something less than a manifest act. The LDA, MCL 560.253(1), appeared to indicate that a municipality's approval of a plat alone was sufficient to constitute acceptance of a dedication. *Marx, supra*, p 74. The *Marx* Court, however, reasoned that the language of judicial decisions suggested that a more specific act than mere approval of a plat was required for acceptance, citing *Kraus II, supra*, pp 424-425, and *Eyde Brothers Dev Co v Roscommon Co Bd of Rd Comm'rs*, 161 Mich App 654, 664; 411 NW2d 814 (1987). *Marx, supra*, p 77.

[2] A separate portion of the *Eyde* decision was questioned by this Court in *Kraus v Gerrish Twp (Kraus I)*, 205 Mich App 25, 46; 517 NW2d 756 (1994), aff'd in part and rev'd in part 451 Mich 420 (1996). The *Kraus I* court concluded that *Eyde's* holding – that a municipality may not formally accept a dedication offer by a McNitt act resolution, 131 PA 130 (repealed, amended and re-enacted) – was wrongly decided and held instead that a McNitt resolution alone was sufficient to constitute acceptance because such resolution evidenced a manifest act. *Id.*, pp 45-46. The McNitt act required a board of county road commissioners to take control of all township highways and incorporate them into one county-wide system within five years. *Kraus,*

(continued…)

In setting forth this principle, the *Eyde* Court relied on *Hooker v City of Grosse Pointe*, 328 Mich 621, 630; 44 NW2d 134 (1950), which espoused that, "[t]he law is clear in Michigan that the offer to dedicate contained in a plat may be accepted informally *by the public through user* or expenditures of public money for the repair, improvement and control of the highway." (Emphasis added.).[3]

In the instant case, defendant's intent to dedicate the streets to public use has been clearly established by recording of the Cheltenham plat. It is undisputed that plaintiff has not formally accepted the dedication, and the only ground given by the court for informal acceptance was public use. The narrow issue, therefore, is whether public use alone sufficiently constitutes a manifest act evidencing informal acceptance of the dedication.

A manifest act is certain and positive conduct, evidencing a voluntary assumption of responsibility over dedicated property. *Kraus v Gerrish Twp (Kraus I)*, 205 Mich App 25, 45; 517 NW2d 756 (1994), aff'd in part and rev'd in part 451 Mich 420 (1996); see also *Trever v Sterling Heights*, 53 Mich App 144, 147; 218 NW2d 810 (1974) (stating that the act of acceptance should clearly and unequivocally indicate a municipality's intent to accept). The purpose of this requirement is "to prevent the public from becoming responsible for land that it

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II, *supra*, p 427. The McNitt resolution at issue in *Kraus I* was a blanket adoption of "all dedicated streets and alleys in recorded plats within Roscommon County." *Kraus II*, *supra*, pp 427-428. *Kraus I*, however, was subsequently reversed on this point by the Supreme Court in *Kraus II*, which held that a McNitt resolution can only constitute a formal acceptance if it expressly identifies a platted road or the recorded plat in which the disputed road was dedicated. *Id*., p 429. The *Kraus II* court declined to address specifically whether the McNitt resolution at issue in *Eyde* was valid. *Kraus II*, *supra*, p 429 n 5.

[3] Defendant argues that acceptance cannot be made by public use alone and attempts to summarily dismiss *Hooker's* pronouncement by arguing that the Court was careless in its use of the disjunctive term "or." Defendant's argument, however, lacks merit in view of the fact that the *Hooker* Court not only articulated the rule as cited, but it affirmed the trial court's holding that acceptance had been made both by improvement and by public user. *Hooker*, *supra*, pp 629-630. The *Hooker* Court summarized the standard employed by the trial court, which it did not discount, that "[i]n view of the express dedication of the street . . . it only becomes necessary to determine whether there has been sufficient user to create an acceptance by the public authorities." *Id.*, p 626. Given the Court's holding and express approval of the trial court's disposition, there is no indication that the *Hooker* Court mistakenly used the term "or" when it should have used the term "and." Further, the *Hooker* Court based its expression of the acceptance rule, in part, on the holding in *Crosby v Greenville*, 183 Mich 452, 461; 150 NW 246 (1914). *Crosby* stands for the proposition that making repairs, improvements, and use of any portion of the dedicated property is sufficient to constitute informal acceptance. *Id*., p 461. This case, and other cases cited by defendant, simply indicate that public use *plus* public expenditure is sufficient to constitute informal acceptance, which Mirage does not dispute. See 23 Am Jur 2d Dedication § 49. "Public use may become evidence of dedication and is separately considered to prove a dedicatory offer, and to prove its acceptance. Where common-law dedication of land to public use is grounded on public use, it is often difficult or impossible to differentiate clearly between use as evidence of an offer of dedication and use as evidence of the requisite public acceptance. Nevertheless, apart from statutes requiring that acceptance be evidenced in a particular manner, acceptance may be predicated on use." (Footnotes omitted.)

neither wants nor needs and to prevent the land from becoming waste property." *Marx*, *supra*, pp 73-74.

Here, the manifest actions of plaintiff, the public authority in this matter, indicate that its intention was precisely *not* to assume responsibility for the streets, and accept defendant's dedication, until all the requirements of its acceptance policy had been fulfilled. Members of council were aware that they had the ability to informally accept the dedication by virtue of public expenditure. On numerous occasions, however, members acknowledged that they did not want to assume responsibility and accompanying liability for Cheltenham streets until the final construction of the roads had been inspected and defendant had posted an appropriate bond. "[P]rivate property cannot be forced on a public authority without its consent." *Kraus II*, *supra*, p 429. In accordance with the courts' treatment of the McNitt act resolutions and § 253(1) of the LDA, we find that before public use will be considered a valid acceptance, the public authority must specifically express, by some specific act or certain and positive conduct, a voluntary assumption of responsibility over the particular property dedicated to the public. See *id*.; *Marx, supra*, pp 74-75; *Kraus I*, *supra*, p 45.

The public authority in this matter clearly conveyed a contrary intent. Public use under these facts, therefore, cannot constitute a valid acceptance. See *Marx, supra*, pp 73-75. Because plaintiff and Mirage have not met their burden of proving a manifest act of acceptance, *Marx, supra*, p 75, the trial court erred when it determined that plaintiff accepted defendant's dedication by virtue of the public's use of the streets alone and that plaintiff and Mirage were entitled to judgment as a matter of law on this issue. Summary disposition in favor of plaintiff and Mirage on this basis, therefore, was inappropriate.

Second, defendant argues that the trial court clearly erred when it found that defendant's notice of withdrawal was ineffective because defendant failed to employ the proper measures pursuant to the LDA to revise the Cheltenham plat.[4] We disagree.

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[4] Defendant also argues that it did not have standing to bring an action under the LDA to withdraw the dedication based on the theory that it is the proprietor or developer of the subdivision and MCL 560.222 only confers standing to sue on "the owner of a lot in the subdivision, a person of record claiming under the owner or the governing body of the municipality in which the subdivision covered by the plat is located." It is defendant's position that the Legislature purposefully revised § 222 to disallow the proprietor or developer of the original plat standing. An earlier version of this section, 1967 PA 288, § 222, provided that "the proprietor of the subdivision or any lot in the subdivision" had standing to bring an action to change the plat. "Proprietor" is defined by the current act as "a natural person, firm, association, partnership, corporation, or combination of any of them that holds an ownership interest in land whether recorded or not." MCL 560.102(o). We need not decide the effect of this change, or whether MCL 560.222 confers standing on a proprietor, who otherwise does not own a lot within the platted subdivision, to bring an action under the LDA because defendant clearly has standing to bring an action pursuant to MCL 560.222 as the current owner of lot 3. See *Nelson v Roscommon Co Rd Comm*, 117 Mich App 125, 130; 323 NW2d 621 (1982) (holding that MCL 560.222 was revised in 1978 to confer standing on a single lot owner).

Property must be platted in accordance with the standards of the LDA, MCL 560.101, *et seq*., whenever a "subdivision" occurs.[5] MCL 560.103(1). The LDA provides that the approval of every plat shall be conditioned upon compliance with the LDA and any municipal ordinance or published rules adopted to carry out the provisions of the LDA. *Conlin v Scio Township*, 262 Mich App 379, 386; 686 NW2d 16 (2004), cinting MCL 560.105. MCL 560.137(c) requires streets, roads or alleys that are not dedicated to public use to be marked on the plat as "private" and named. Once a plat has been recorded, in order "[t]o vacate, correct, or revise [the] recorded plat or any part of it," the LDA mandates that "a complaint . . . be filed in the circuit court by the owner of a lot in the subdivision, a person of record claiming under the owner or the governing body of the municipality in which the subdivision covered by the plat is located." MCL 560.222; *Martin v Beldea*n, 469 Mich 541, 551; 677 NW2d 312 (2004). The LDA also requires that a survey and plat be made "when any amendment, correction, alteration or revision of a recorded plat is ordered by a circuit court." MCL 560.103(3).

Defendant claims that its withdrawal of an offer to dedicate does not require a court action under the LDA, maintaining that its withdrawal cannot be considered a replat, which would require court action to vacate the original plat, because defendant does not seek to change the "boundaries" of the original plat. See MCL 560.102(u); MCL 560.104. While defendant correctly asserts that its dedication revocation cannot be considered a "replat," requiring it to file suit pursuant to MCL 560.104, defendant improperly deduces that it is therefore exempt from filing any court action pursuant to the LDA. The approved and recorded plat provides for Cheltenham's streets to be public streets. The plat does not mark the streets as private. Defendant's subsequent desire to revoke its dedication, contained within the recorded plat, is also an attempt to correct or revise part of the recorded plat. Therefore, pursuant to MCL 560.222, defendant is required to initiate an action in circuit court to obtain its desired correction or revision of the recorded plat. See *Martin, supra*, p 551; *Hall v Hanson*, 255 Mich App 271, 286-287; 664 NW2d 796 (2003).

Defendant attempts to distinguish its withdrawal of a dedication from a replat or a plat revision, correction, or vacation, by citing to MCL 560.255b. Defendant asserts that this statute demonstrates the Legislature's intent to differentiate dedication withdrawals from replats and plat revisions, corrections, and vacations. The plain language of MCL 560.255b indicates that it operates as a mechanism to affirmatively establish acceptance after a ten-year period, in the absence of evidence to the contrary. This presumption may be rebutted where, for example, a notice to withdraw has been recorded. MCL 560.255b(2)(b). This provision, however, is

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[5] MCL 560.102(f) defines subdivision, in part, as:

> the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than 1 year, or of building development that results in 1 or more parcels of less than 40 acres or the equivalent, and that is not exempted from the platting requirements of this act by sections 108 and 109.

inapplicable to the present case because a ten-year period has not elapsed since the recording of the plat and plaintiff does not attempt to call upon its provisions to establish acceptance. See *id.*

A notice of withdrawal can operate, under § 255b, as evidence that the dedication offer has been revoked. A notice of withdrawal could also effectively communicate and revoke an offer to dedicate absent § 255b. However, in this case, the plat had been recorded and the subdivision had been fully developed at the time defendant filed its notice. Under these circumstances, defendant not only sought to withdraw his offer to dedicate the streets, but, at the same time, it sought to revise and alter the recorded plat. A notice of withdrawal will not always constitute a plat revision governed by the LDA, but, in this matter, the withdrawal equaled a plat revision and defendant failed to file the appropriate action.

Defendant contends that the LDA does not provide the exclusive means to determine property rights in a plat. The Supreme Court in *Martin, supra*, p 551, addressed the circumstances under which a party must seek recourse under the LDA and when a party does not.

> [B]ecause plaintiffs were attempting to vacate, correct, or revise the plat, we find that the trial court erred when it allowed this case to proceed as a quiet title cause of action. [*Id.*, pp 551.]
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> Accord [*Hall, supra,* p 286] (because the defendants sought to vacate or otherwise alter the plats dedicating the boulevard to the public, they should have brought their countercomplaint pursuant to the Land Division Act). Correspondingly, if a party merely wants to maintain the status quo, e.g., be declared an owner or someone with use rights under a plat, such party would not be seeking to vacate, correct, or revise the plat and thus would not be limited to filing a lawsuit pursuant to the LDA. [*Id.*, pp 550 n 21.]

Defendant has not attempted merely to maintain the status quo, because the status quo provides that Cheltenham streets are dedicated for public use. Defendant has, instead, sought to alter the original recorded plat. Like the plaintiffs in *Martin*, defendant should have proceeded to revise the plat pursuant to the LDA. *Id.*, p 552. The reason the LDA requires lawsuits seeking a plat revision to adhere to the LDA, MCL 560.221 *et seq.*, is to ensure that plats on file remain accurate and enable the public to rely on them. *See id.*, p 551 n 24. Defendant, therefore, should have proceeded under the provisions of the LDA when it sought to revise and alter its original Cheltenham plat. Consequently, we conclude that the trial court did not err in finding the notice of withdrawal ineffective.

Defendant's third argument is that the trial court erred when it found that defendant should be estopped from withdrawing its offer to dedicate streets to the public. We disagree.

We review de novo a trial court's decision to apply equitable estoppel. *West American Ins Co v Meridian Mut Ins Co*, 230 Mich App 305, 309-310; 583 NW2d 548 (1998). "Equitable estoppel is not an independent cause of action, but instead a doctrine that may assist a party by precluding the opposing party from asserting or denying the existence of a particular fact."

ConAgra v Farmers State Bank, 237 Mich App 109, 140-141; 602 NW2d 390 (1999). Equitable estoppel applies when (1) a party intentionally or negligently causes another party to believe facts through its representations, admissions, or silence, (2) the other party acts on the belief in justifiable reliance, and (3) the other party will suffer prejudice if the first party is permitted to deny the facts. *West American Ins, supra*, p 310. "'Constructive trusts are said to arise through the application of the doctrine of equitable estoppel, or under the broad doctrine that equity regards and treats as done what in good conscience ought to be done.'" *Cerling v Hedstrom*, 51 Mich App 338, 344; 214 NW2d 904 (1974), quoting *Kent v Klein*, 352 Mich 652, 657-658; 91 NW2d 11 (1958). In *Kammer Asphalt Paving Co v East China Twp*, 443 Mich 176, 188; 504 NW2d 635 (1993), the Supreme Court set forth the parameters of a constructive trust:

> A constructive trust may be imposed "where such trust is necessary to do equity or to prevent unjust enrichment . . . ." Hence, such a trust may be imposed when property "'has been obtained through fraud, misrepresentation, concealment, undue influence, duress, taking advantage of one's weakness, or necessities, or any other similar circumstances which render it unconscionable for the holder of the legal title to retain and enjoy the property . . . .'" Accordingly, it may not be imposed upon parties "who have in no way contributed to the reasons for imposing a constructive trust." [*Id*. (citations omitted).]

Property need not be wrongfully acquired for imposition of a constructive trust; it is sufficient that property is unconscionably withheld. *Chapman v Chapman*, 31 Mich App 576, 579; 188 NW2d 21 (1971), citing quoting *Kent, supra*, p 657. Unjust enrichment occurs when (1) the defendant received a benefit from the plaintiff and (2) it would be inequitable to the plaintiff if the defendant retained the benefit. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003).

Although defendant correctly indicates that generally a public authority must accept a dedication in order to render it irrevocable, defendant may also be estopped from withdrawing its dedication if the equities so require. In *West Michigan Park Assoc v Dep't of Conservation*, 2 Mich App 254, 264-265; 139 NW2d 758 (1966), we stated:

> In the case of dedication by plat the matter of acceptance is peculiarly apt to be overlooked by reason of the ready implication of acceptance, and sometimes acceptance almost seems to be implied as a matter of course * * * Generally, however, the plat is taken as a mere offer to dedicate**,** which must be accepted before the dedication is complete * * * Although the owner, by platting land and conveying lots with reference to the plat**,** is, as a general rule, estopped to deny the dedication of the parts of the tract marked on the plat as streets, alleys, parks, or other public places, as against his grantees, or *may even be estopped to revoke or deny such dedication as against the public***,** it does not necessarily follow that the dedication is accepted by the municipality. [*West Michigan Park Assoc, supra*, 2 Mich App 264-265 (quoting, in part, 23 Am Jur 2d, Dedication, § 40, pp 38-40 and 43-45) (emphasis added).]

Thus, even where a dedication has not been accepted, a defendant may nevertheless be estopped from withdrawing its dedication to prevent injustice.

Novi's ordinance requires that each lot of a subdivision directly front a public street. Novi City Code, Novi Zoning Ordinance, § 2517. Pursuant to the ordinance in effect at the time of defendant's plat dedication and the trial court's decision, plaintiff could not accept a street dedication until street construction had been completed and inspected and a maintenance bond posted, in accordance with its street acceptance policy.[6] Novi City Code, Subdivision Ordinance, § 3.06 (1998). As an accommodation to builders, city ordinance and policy allowed building permits to be issued and construction to begin prior to acceptance and the establishment of public streets. This accommodation, however, specifically conditioned the issuance of subdivision building permits, pertaining to lots abutting roads not yet accepted by plaintiff, upon "continued compliance" with plaintiff's street acceptance policy. Novi City Code, Art II, § 7-22 (1997). The ordinance allowed plaintiff to cease issuing further building permits and issue stop work orders when a subdivision violates the acceptance policy. *Id*. The policy required the project to be 100 percent completed within two years of plat dedication, enabling the streets to be accepted by plaintiff.

Defendant demonstrated actual and constructive notice of its obligation to adhere to plaintiff's acceptance policy by completing the dedication process and offering plaintiff the opportunity to accept the dedication once the building permits were issued. Defendant represented to both plaintiff and the builder that it would satisfy the conditions and requirements to complete the dedication process. In reliance upon these representations and the obligation imposed on defendant by ordinance, plaintiff issued the building permits to the builder and installed public utilities beneath Cheltenham streets. Defendant intended that its representations induce plaintiff's reliance, which increased the value of its subdivision and allowed it to sell lots to the builder. If defendant were permitted to withdraw from its obligations and revoke its offer to deduct almost six years after the plat was approved and building permits were issued, plaintiff would be injured and defendant would be unjustly enriched. If Cheltenham streets were private, plaintiff's planning process would be hindered, plaintiff would have no access to the utilities installed beneath Cheltenham streets, and city ordinances would be violated. Defendant, on the other hand, would have received all the benefits of its representations from plaintiff, including plat approval, subdivision marketability, and early construction, without having to follow through with the dedication.

Under these facts, it would be unconscionable for defendant to retain legal title to Cheltenham streets. See *Chapman, supra*, p 579. Equitable estoppel, therefore, requires that a constructive trust be imposed. See *Kammer Asphalt Paving, supra*, p 188; *Cerling, supra,* pp 344. Because the elements of equitable estoppel and constructive trust have been met, this Court need not determine whether plaintiffs also established a promissory estoppel cause of action. Accordingly, the trial court did not err in granting summary disposition in favor of plaintiff and Mirage.[7]

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[6] Several of the ordinances were amended in September 2004. The 2004 Amendments eliminate reference to the city's acceptance policy.

[7] Defendant argues at length that plaintiff should provide Cheltenham with a means for secondary access as promised over the course of Cheltenham's development. We note that
(continued…)

Fourth, defendant argues that neither plaintiff nor Mirage had standing to challenge its dedication withdrawal. We disagree.

We review de novo whether a party has standing. *Higgins Lake, supra*, p 89. Defendant has preserved the standing issue concerning plaintiff for appeal because defendant raised it in its first responsive pleading. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, __ Mich App __; __ NW2d __ (Docket No. 248580, issued December 7, 2004), slip op, p 3. Defendant, however, has waived the standing issue pertaining to Mirage because defendant stipulated to Mirage's intervention, and assented to Mirage's right to intervene. MCR 2.209(A)(1). *Id.*, p 3-4. Defendant cannot stipulate to a matter and then claim on appeal that the result was error. *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001).

Our Supreme Court has endorsed the test for standing articulated by the United States Supreme Court in *Lujan v Defenders of Wildlife*, 504 US 555, 560; 112 S Ct 2130; 119 L Ed 2d 351 (1992). *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 736; 629 NW2d 900 (2001). A plaintiff must meet the following constitutional minimum standing criteria:

> "First, the plaintiff must have suffered an 'injury in fact' – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not "conjectural" or "hypothetical."' Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be 'fairly . . . traceable to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.' Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.' [*Crawford v Dep't of Civil Service*, 466 Mich 250, 258; 645 NW2d 6 (2002), quoting *Lujan, supra*, p 560-561.]

The injury suffered by the plaintiff must be distinct from that suffered by the public at large; "a party ordinarily must have a substantial personal interest at stake in a case or controversy, as opposed merely to having a generalized interest in the same manner as any citizen." *Michigan Coalition of State Employee Unions v Michigan Civil Service Comm*, 465 Mich 212, 217-218; 634 NW2d 692 (2001). If the plaintiffs cannot establish an actual injury or a likely chance of an immediate injury that is different from the public at large then, generally, the plaintiffs' suit should be precluded. *Franklin Historic Dist Study Comm v Village of Franklin*, 241 Mich App 184, 187-188; 614 NW2d 703 (2000).

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plaintiff may be required, or could have been required, by contract and/or equity, to provide defendant with secondary access for Cheltenham and to release its temporary easement over lot 3. This issue, however, has not been presented on appeal. Defendant's counter-complaint against plaintiff included causes of action for breach of temporary easement agreement and promissory estoppel based on plaintiff's representation that it would provide secondary access to Cheltenham and then release its temporary easement over lot 3. Defendant's statement of questions presented, however, does not present these issues to this Court on appeal. Therefore, this issue has been waived and we need not address it. *Campbell v Sullins*, 257 Mich App 179, 192; 667 NW2d 887 (2003).

In actions governed by statute, a plaintiff must have standing to sue under the statute. *Ryan v Ryan*, 260 Mich App 315, 332; 677 NW2d 899 (2004). The LDA confers standing upon a municipal plaintiff to sue. MCL 560.265 provides: "[a]ny municipality . . . may bring an action in its own name to restrain or prevent any violation of this act or any continuance of any such violation. Such action shall be brought in the county where the land is located, the defendant resides or has his principal place of business." Moreover, plaintiff demonstrated distinct, concrete injury different from injury suffered by the public at large where plaintiff approved defendant's plat and issued building permits, installed public amenities underneath the roads, and allowed its residents to move into the subdivision in reliance on defendant's representations and dedication. We therefore conclude that plaintiff had standing.

Defendant's fifth argument is that the trial court erred when it dismissed defendant's counter-complaint because the requirement mandating dedication of subdivision streets to the public as a condition for plat approval and the issuance of building permits amounts to an unconstitutional taking.[8] We disagree. This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel, supra,* p 561. The constitutionality of a statute or ordinance is a question of law subject to review de novo. See *People v Abraham*, 256 Mich App 265, 280; 662 NW2d 836 (2003).

Defendant contends that plaintiff had no statutory authority to require street dedication as a condition of plat approval and the issuance of building permits. The LDA provides that the approval of every subdivision plat shall be conditioned upon compliance with (1) the LDA and (2) any municipal ordinance or published rules adopted to carry out the provisions of the LDA. MCL 560.105; *Conlin, supra*, p 386; see also MCL 560.106 (plat approval shall not be conditioned upon any requirement other than stated in § 105). Further, the LDA indicates that standards for plat approval are "minimum standards and any municipality, by ordinance, may impose stricter requirements and may reject any plat which does not conform to such requirements." MCL 560.259; *Conlin, supra*, p 387. MCL 560.137(c) requires streets, roads or alleys that are not dedicated to public use to be marked on the plat as "private" and named. The governing body is required to deny "a plat which is isolated from or which isolates other lands from existing public streets, unless suitable access is provided." MCL 560.182(4)(a). The ordinances here were enacted in accordance with the authority granted by the LDA and in an effort to carry out the provisions of the LDA. MCL 560.105(b).

Despite plaintiff's statutory authority to require street dedication, defendant argues that these ordinances, as applied, constituted a taking. We disagree.

Both the state and federal constitutions forbid the taking of private property for public use unless just compensation is provided. US Const, Am V; Const 1963, art 10, § 2; *Adams Outdoor*

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[8] Defendant also argues in its brief on appeal that plaintiff exceeded its power when it demanded that defendant give an easement over its property to Wilshire. The evidence, however, does not support defendant's assertion. The evidence presented on summary disposition instead indicates that plaintiff demanded that defendant dedicate its streets to the public, after which time it was plaintiff's intent that the streets could be used by Wilshire for access to Beck road.

Advertising v East Lansing (After Remand), 463 Mich 17, 23; 614 NW2d 634 (2000). A municipal regulation amounts to an unconstitutional taking if it either (1) does not substantially advance legitimate state interests or (2) denies an owner economically viable use of the land. *K & K Construction, Inc v Dep't of Natural Resources*, 456 Mich 570, 576; 575 NW2d 531 (1998); *Merkur Steel Supply v Detroit*, 261 Mich App 116, 130; 680 NW2d 485 (2004). To establish that a legitimate state interest is not substantially advanced by a regulation, the landowner must prove (1) that no reasonable governmental interest is advanced by the zoning classification or (2) that the regulation is unreasonable "because of the purely arbitrary, capricious and unfounded exclusion of other types of legitimate use from the area in question." *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 340; 675 NW2d 271 (2003), quoting *Frericks v Highland Twp*, 228 Mich App 575, 594; 579 NW2d 441 (1998).

> Three rules of judicial review apply: "(1) the ordinance is presumed valid; (2) the challenger has the burden of proving that the ordinance is an arbitrary and unreasonable restriction upon the owner's use of the property; that the provision in question is an arbitrary fiat, a whimsical *ipse dixit;* and that there is not room for a legitimate difference of opinion concerning its reasonableness; and (3) the reviewing court gives considerable weight to the findings of the trial judge." [*Id*.]

Defendant argues only that the ordinances conditioning plat approval and the issuance of building permits upon dedication of subdivision streets to the public do not substantially advance legitimate state interests. The requirement that all subdivision lots front a public street allows the municipality to provide public utilities and services, such as snow plowing, and the interconnection of neighboring subdivisions, which furthers the public's interest in safety and fosters a sense of community. Mandating that this public dedication be indicated on each plat furthers the reliability of recorded documents. Additionally, conditioning the issuance of building permits on adherence to the street acceptance policy ensures that the developer will build soundly constructed roads. Because the ordinances at issue further legitimate governmental interests of public health, safety, and welfare, defendant has failed to overcome the presumption that the ordinances are valid. See *Bevan v Brandon Twp*, 438 Mich 385, 390, 399-400, 405; 475 NW2d 37 (1991), amended 439 Mich 1202 (1991); *Shepherd Montessori Ctr Milan, supra*, p 340. We, therefore, find that no taking occurred.[9]

Defendant's last argument is that the trial court erred when it dismissed defendant's counter-complaint because its equal protection rights were violated when plaintiff waived the connection requirements for neighboring subdivisions and continued to enforce the secondary access requirement for Cheltenham. We disagree.

Equal protection of the law is guaranteed by both the federal and Michigan constitutions, US Const, Am XIV; Const 1963, art 1, § 2. *Wysocki v Felt*, 248 Mich App 346, 350; 639 NW2d 572 (2001). Both guarantees afford similar protection. *Crego v Coleman*, 463 Mich 248, 258;

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[9] Defendant also disputes the trial court's sua sponte dismissal of its claims. However, where no material fact exists and a party is entitled to judgment as a matter of law, the trial court must render judgment without delay. MCR 2.116(I)(1).

615 NW2d 218 (2000). When a legislative classification is challenged as violative of equal protection, the validity of the classification is measured by one of three tests. *Id.*, p 259. The type of classification and the nature of the affected interest govern which test to apply. *Proctor v White Lake Twp Police Dep't*, 248 Mich App 457, 469; 639 NW2d 332 (2001). In applying the test, all provisions of the law, and its object and policy, should be considered. *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 717; 575 NW2d 68 (1997). Social and economic laws, such as the municipal ordinances regarding zoning and the development of subdivisions at issue here, are examined under the rational basis test. *Phillips v Mirac, Inc*, 470 Mich 415, 434; 685 NW2d 174 (2004); *Shepherd Montessori Ctr Milan, supra*, p 334. Under rational basis review, legislation will be upheld if it is rationally related to a legitimate governmental purpose. *Phillips, supra*, p 433. This is a highly deferential standard of review which requires a challenger to show that the legislation is "arbitrary and wholly unrelated in a rational way to the objective of the statute." *Crego, supra*, p 259, quoting *Smith v Employment Security Comm*, 410 Mich 231, 271; 301 NW2d 285 (1981). A classification which has a rational basis is not invalid because it results in some inequity. *Id.*, p 260.

Defendant recognizes that the ordinances at issue do not make any classifications on their face; defendant, instead, argues that plaintiff intentionally applied these laws to Cheltenham differently from similarly situated subdivisions when plaintiff would not waive the secondary access requirement for defendant. Defendant's argument fails, however, because the undisputed facts indicate that Cheltenham is not similarly situated to the other three subdivisions, Edinborough, Beckenham, and Wilshire. The equal protection guarantee requires that persons under similar circumstances be treated alike; it does not require that persons under different circumstances be treated the same. *Morales v Parole Bd*, 260 Mich App 29, 49; 676 NW2d 221 (2003).

Beckenham's plat was approved about 1995, when no ordinance required subdivision interconnection. Plaintiff granted an interconnection waiver to Edinborough at the request of Edinborough residents. Cheltenham and Wilshire, on the other hand, were formerly one contiguous parcel with limited Beck road frontage that went through the plat approval and development process at approximately the same time. At the time each plat was approved, Wilshire was landlocked. The only way Wilshire could connect to Beck road was through Cheltenham. Like Cheltenham, the city council required Wilshire to maintain secondary access and provide for future interconnection. Thus, not only does the evidence indicate that Cheltenham was not similarly situated to the Beckenham and Edinborough subdivisions, it indicates that Wilshire was not treated differently, and defendant's equal protection claim should fail on this basis. See *Morales, supra*, p 49.

Moreover, defendant's equal protection claim fails as a matter of law because plaintiff's disparate treatment was rationally related to the legitimate governmental concerns for the safety of the residents and for the flow of traffic in the area. See *Phillips, supra*, p 434. Under rational basis review, a statute shall pass constitutional muster "'if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable.'" *Harvey v Michigan*, 469 Mich 1, 7; 664 NW2d 767 (2003), quoting *Crego, supra*, pp 259-260. A statute is not unconstitutional merely because it is undesirable, unfair, unjust, or inhumane. *People v Boomer*, 250 Mich App 534, 538; 655 NW2d 255 (2002). We

therefore conclude that defendant's equal protection claim was properly dismissed by the trial court.

Affirmed.

/s/ Christopher M. Murray
/s/ Patrick M. Meter
/s/ Donald S. Owens